(1)

Supreme Court, U.S.
FILED

'98 70 APR 27 1998

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1997

DENNIS RAE BUCKLEY

Petitioner,

-v-

STATE OF ARIZONA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

To The Superior Court
of the State of Arizona

Dennis Rae Buckley
2268 Merrill Ave.
Bullhead City, AZ 86442
(520)754-4722

14 pp

QUESTION OF LAW FOR CONSIDERATION

1. Did ARIZONA STATE SUPERIOR COURT misuse UNITED STATES SUPREME COURT Case Law, Petitioner 95-345 v. Guy Jerome Usury, ____U.S.____, (JUNE 24, 1996) 1996 WL340815 (U.S.) in the ARIZONA SUPERIOR COURT CASE of 94-CR-73 Petitioner for Rule 32 Relief?

DECISIONS BELOW

1. June 28, 1996 HONORABLE JAMES E. CHAVEZ dismisses the Rule 32 Petition. A copy is attached as Appendix A.1.
2. September 24, 1997 Appellate Court denies Review. A copy is attached as Appendix A.2.
3. October 7, 1997 Appellate Court denies Reconsideration. A copy is attached as Appendix A.3.
4. January 29, 1998 Arizona Supreme Court denies review. A copy is attached as Appendix A.4.
5. February 12, 1998 Court of Appeals State of Arizona, Division One, denies Motion to Stay. A copy is attached as Appendix A.5.

◆

JURISDICTION

The judgement of the Arizona Supreme Court was entered on January 29, 1998. A copy is attached as Appendix A.4. Jurisdiction is conferred on the United States Supreme Court by 28 U.S.C. // 2101 (c); 28 U.S.C. // 2403 (B) may apply; Rule 13.1, Supreme Court Rules.

Note: Arizona's Attorney General's Office has received a copy of this petition in the U.S. mail.

◆

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution which provides:

> SEC. 1
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall abridge the privileges or immunities of citizens of the United States; nor shall

> any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The XIV Amendment to the United States Constitution is enforced, in part, by the Arizona State Constitution's Article II Section Four, Thirty, and Twenty-four which provide:

> 4. Due Process of Law: No person shall be deprived of life, liberty, or property without due process of law.
>
> 13. Equal Privileges and Immunities: No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.
>
> 24. Rights of Accused in Criminal Prosecutions: In criminal prosecutions, the accused shall have the right to appear.....and the right to appeal in all cases; and in no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

Addressing the question of whether the application of present Supreme Court guidelines or the Supreme Court guidelines of the sentencing period shall be used, defendant cites:

1. Although it is not material to our decision, we note that // 922 (j) has since been amended to apply to any stolen firearm "which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen." We apply the statute as it read in 1993, when the offense in this case was committed.

U.S. v. CRUZ, 50 F.3d 714 (9th Cir. 1995)
FLETCHER, PREGERSON, and RYMER,
Circuit Judges
(subscript 1., page 715)

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

This case raises questions of interpretation and application of United States Supreme Court decisions and DUE PROCESS and EQUAL RIGHTS clauses of the Fourteenth Amendment to the United States Constitution. An appeal at the time of a significant change in the law, or interpretation thereof, is logical; but, if a court judges by changes in the law after the just filing of an appeal, what good is the appeal process? Will it not entice the courts to drag out cases waiting for ruling guidelines that favor confirming earlier decisions? In petitioner's sentencing hearing the largeness of the amount and fact that the forfeiture case was concluded were discussed. The U.S.Supreme Court and Ninth Circuit Court guidelines of the time for Forfeiture as Double Jeopardy indicate a second case from the original charges would be questionable; however, these guidelines had not been in place more than a few days, and the court was not yet fully aware of them. In 1996 while in a law class, the petitioner became aware of the possibility of an appeal. No direct appeal was available to an inmate who's accepted a plea bargain in Arizona. A Rule 32 Action is the only course allowed by Arizona courts. Petitioner's Rule 32 was accepted in Arizona Superior Court by Judge James E. Chavez only to be dismissed, using Petitioner 95-345 v. Guy Jerome Usury, ____U.S_____, (June 24, 1996) 1996 WL340815 (U.S.), in a negative without properly applying the stated test within that case, which petitioner alleges puts his criminal case, being the second of two separate actions based on the same charges (the forfeiture action taking only money in a multiple figure of the criminal fines imposed, with only four days of investigation involved in the case and no record of any extra state costs), in question of being Double Jeopardy. Petitioner has applied to the Arizona Appellate and Supreme Courts for Review; but, has been denied every attempt of appeal. Petitioner cites U.S. v. CRUZ, 50 F.3D 714 (9TH Cir. 1995) as his authority to question Judge Chavez's post use of Usury to dismiss his Rule 32 Petition and asks the U.S. Supreme Court set a guideline on these points: (1.) A scale of civil forfeiture moneys that can be considered shockingly high in relationship to the income or criminal fines of the individual involved; (2.) Reinforcement of the test stated in UNITED STATES SUPREME COURT cases such as Usury; (3.) An answer to the question: Is case law of the sentencing period to be used or can a state judge, using U.S. Supreme Court rulings as his

authority, take a ruling that dates long after the appeal is filed to decide a case. Petitioner is ready with sentencing transcript, civil forfeiture documents, and lower court arguments should this writ be granted.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case; further, if the court decides to grant this writ, petitioner requests he be allowed to continue PRO SE before the court, as the enormous costs to date have been a hardship and to hire a lawyer of U.S. Supreme Court standing would be an impossible cost for this petitioner.

July 3, 1998

Respectfully submitted,

Dennis Rae Buckley

Dennis Rae Buckley
Petitioner

Appendix A

APPENDIX A.1

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

HONORABLE JAMES E. CHAVEZ
DIVISION IV
DATE:JUNE 28, 1996

LINDA D. SEAPY, CLERK
*ag

MINUTE ORDER

STATE OF ARIZONA,
Plaintiff,

vs. NO. 94-C4-73

DENNIS RAE BUCKLEY
Defendant

IT IS ORDERED reducing defendant's monthly payment towards the fine of $250.00 per month.

The Court acknowledges receipt of Petitioner's reply pursuant to Rule 32.

IT IS ORDERED dismissing the Petition. Petitioner's double jeopardy claim is not supported by the U.S. Supreme Court. United States, Petitioner 95-345 v. Guy Jerome Usury ___U.S.___ (June 24, 1996) 1996 WL 340815(U.S.)

cc:
Mohave County Attorney

Dennis R. Buckley
2268 Merrill Avenue
Bullhead City, AZ 86442

Honorable Grant Woods
Arizona Attorney General

Honorable James E. Chavez
Division IV

52C

APPENDIX A.2

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DIVISION 1
COURT OF APPEALS
STATE OF ARIZONA

FILED SEP 24 1997
GLEN D. CLARK, CLERK
/s/GLEN D. CLARK

STATE OF ARIZONA, Respondent, v. DENNIS RAE BUCKLEY Petitioner,	1 CA-CR 96-0614PR DEPARTMENT D MOHAVE County Superior Court No. 94-CR-73 O R D E R

Presiding Judge Michael D. Ryan, and Judges Susan A. Ehrlich and Thomas C. Kleinschmidt have considered this petition for review from the trial court's denial or post-conviction relief.

IT IS ORDERED denying review.

DATED this 24th day of September, 1997.

/s/ Michael D. Ryan
MICHAEL D. RYAN
PRESIDING JUDGE

Appendix A.3

Philip E. Toci
Chief Judge

E.G. Noyes, Jr.
Vice Chief Judge

Sarah D. Grant
Thomas C. Kleinschmidt
Noel Fidel
Rudolph J. Gerber
Edeward C. Voss
Susan Ai Ehrlich
Ruth V. McGregor
Jefferson L. Lankford
William F. Garbarino
Sheldon H. Weisberg
Jon W. Thompson
James B. Sult
Cecil B. Paterson, Jr.
Michael D. Ryan
Judges

SUPREME COURT
STATE OF ARIZONA

GLEN D. CLARK
CLERK OF THE COURT

RUTH A. GILLINGHAM
CHIEF DEPUTY

(602)542-4821

Court of Appeals
State of Arizona
Division One
State Courts Building
1501 West Washington Street
Phoenix, Arizona 85007

October 7, 1997

Mr. Dennis Rae Buckley
2268 Merrill Avenue
Bullhead City, AZ 86442

Re: 1 CA-CR 96-0614 PR
STATE v. BUCKLEY
MOHAVE 94 CR 73
Dear Mr. Buckley:

On October 1, 1997 this court received your motion for reconsideration of this court's order denying review in your petition for review of post-conviction relief proceedings. Pursuant to Rule 31.18(d), a motion for reconsideration from the denial of a petition for review is not permitted. That rule states in part, "Unless permitted by specific order of the appellate court, no party shall file a motion for reconsideration of ...(2) an order denying a petition for review..." If you wish to seek further review of your case, you may wish to consider filing a petition for review to the Arizona Supreme Court, all in accordance with Rules 31.18, 31.19 and 32.9(f), Arizona Rules of Criminal Procedure. For your convenience, I have enclosed a copy of those rules. Because there is no provision for the filing of a motion for reconsidera-

tion, we are returning to you the original and all copies for whatever action you deem appropriate.

Very truly yours,

/s/ Glen D. Clark
Glen D. Clark, Clerk

Enclosure (as noted)

GDC/DB
C: file
Mr. Grant Woods
Honorable William J. Ekstrom, Jr.
Ms. Linda Seapy, Clerk

APPENDIX A.4

SUPREME COURT
STATE OF ARIZONA

Supreme Court

NOEL K. DESSAINT
CLERK OF COURT

STATE OF ARIZONA
402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON
PHOENIX, ARIZONA 85007-3329

TELEPHONE: (602)542-9396

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

January 29, 1998

RE: STATE OF ARIZONA vs DENNIS RAE BUCKLEY
Supreme Court No. CR-97-0431-PR
Court of Appeals No. 1 CA-CR 96-0614-PR
Mohave County No. 94-CR-73

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on January 29, 1998, in regard to the above referenced cause:

ORDERED: Petiton for Review - DENIED.

A panel compossed of Vice Chief Justice Jones, Justice Feldman, and Justice Martone participated in the determination of this matter.

Record returned to Court of Appeals, Division One, Phoenix, this 29th day of January, 1998.

TO:

Hon. Grant Woods, Attorney General
Attn: Paul J. McMurdie, esq.
William J. Ekstrom Jr., Mohave County Attorney
Dennis R. Buckley, Pro Se
Glen D. Clark, Clerk, Court of Appeals, Division One, Phoenix
Lexis-Nexis
West Publishing Company

ldo

APPENDIX A.5

17B

DIVISION 1
COURT OF APPEALS
STATE OF ARIZONA

FILED FEB 12, 1998
GLEN D. CLARK, CLERK
By Glen D. Clark

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Respondent, V. DENNIS RAE BUCKLEY, Petitioner	1 CA-CR 96-0614-PR MOHAVE COUNTY Superior Court No. 94-CR-73 ORDER

The court has considered petitoner's motion for stay.

IT I S ORDERED denying the motion.

DATED this 12th day of February, 1998.

/s/ Signature Illegible
ANTHONY MACKEY
JUDGE PRO TEMPORE